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SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

Alan Elizalde, on behalf of himself, all
others similarly situated, and the general
public,

Plaintiffs,

vs.

SECO Packing II LLC, a California
Limited Liability Company, Mission
Ranches Holdings, LLC, a California
Limited Liability Company, and DOES 1
through 100, inclusive,

Defendants.

Case No.

FIRST AMENDED COMPLAINT

CLASS ACTION

- 1. FAILURE TO COMPENSATE FOR ALL HOURS WORKED** (Lab. Code §§ 200-204, 216, 223, 225.5, 500, 510, 558, 1197, 1194, 1198; IWC Wage Orders);
- 2. FAILURE TO PAY OVERTIME WAGES** (Lab. Code §§ 200-204, 210, 216, 223, 225.5, 500, 510, 558, 1194, 1198; IWC Wage Orders);
- 3. FAILURE TO PAY MINIMUM WAGE** (Lab. Code §§ 223, 1194 *et seq.*);
- 4. FAILURE TO PROVIDE MEAL AND REST PERIODS** (Lab. Code §§ 226.7, 512; IWC Wage Orders);
- 5. FAILURE TO PAY FINAL WAGES ON TIME** (Lab. Code §§ 201 *et seq.*);
- 6. FAILURE TO MAINTAIN ACCURATE RECORDS** (Lab. Code

- §§ 1174, 1174.5);
7. FAILURE TO FURNISH WAGE AND HOUR STATEMENTS (Lab. Code §§ 226(e), 226.3);
8. PRIVATE ATTORNEY GENERAL ACT (Lab. Code §§ 2698 *et seq.*); and
9. UNFAIR BUSINESS PRACTICES (Bus. & Prof. Code §§ 17200 *et seq.*).

JURY TRIAL DEMANDED

This Complaint is brought by Plaintiff Alan Elizalde (“Plaintiff” and/or “Mr. Elizalde”), on behalf of himself, all others similarly situated, and the general public, against their former employers, Defendant SECO Packing II LLC (“SECO”), Defendant Mission Ranches Holdings, LLC (“Mission Ranches”), and DOES 1-100, inclusive (“DOE Defendants”) (collectively “Defendants”). Plaintiff hereby demands a jury trial on all causes of action. Plaintiff alleges the following:

PLAINTIFF

1. At all times material herein, Plaintiff Elizalde was and is a competent adult and resident of the State of California, Monterey County. Plaintiff began working for Defendants at various field in the King City area as a field worker/general laborer in May 2020. Plaintiff’s employment ended in October 2020.

DEFENDANTS

2. At all times material herein, Defendant SECO was and is a California limited liability company registered to do business in the State of California, including but not limited to conducting business within Monterey County, with its corporate headquarters located in King City, California. At all relevant times alleged herein, Plaintiff is informed and believes that Defendant SECO is authorized to and does conduct business in Monterey County in the State of California in the contract labor industry.

3. At all times material herein, Defendant Mission Ranches was and is a California limited liability company registered to do business in the State of California, including but not limited to conducting business within Monterey County, with its corporate headquarters located

1 in King City, California. At all relevant times alleged herein, Plaintiff is informed and believes
2 that Defendant Mission Ranches is authorized to and does conduct business in Monterey County,
3 in the State of California in the agricultural industry.

4 4. Plaintiff is informed and believes and thereon alleges that Defendant Mission
5 Ranches, while contracting with Defendant SECO, retained sufficient control of the wages, hours,
6 and conditions of employment of Plaintiff and Class Members in doing the acts hereinafter
7 alleged, and that each corporation is liable under California and federal law for the damages
8 sustained by Plaintiff and Class Members.

9 5. Plaintiff is informed and believes and thereon alleges that Mission Ranches and
10 SECO, and each of them, were his employers under California law, that all Defendants herein did
11 acts consistent with the existence of an employer-employee relationship with Plaintiff and Class
12 Members. Moreover, Defendants, Plaintiff and Class Members were controlled, directly or
13 indirectly, by Mission Ranches.

14 6. Plaintiff is informed and believes, and based thereon alleges that, within the Class
15 Period, Defendants conducted business within the contract labor industry. In so doing, there are
16 hundreds, if not thousands, of individuals in recent years alone who qualify to participate as a
17 Class Member in this action.

18 7. The defendants identified as DOES 1 through 100, inclusive, were, at all times
19 herein-mentioned, agents, business affiliates, successors- and/or predecessors-in-interest,
20 officers, directors, partners, and/or managing agents of some or each of the remaining defendants.
21 Plaintiff is informed and believes and, on that basis, alleges that, at all times herein-mentioned,
22 each of the defendants identified as DOES 1 through 100, inclusive, employed, and/or exercised
23 control over the conditions of Plaintiff and Class Members which led to the instant lawsuit and
24 which are described herein. In doing the acts herein alleged, each Defendant is liable and
25 responsible to Plaintiff and Class Members for the acts of every other Defendant. The true names
26 and capacities of the DOE Defendants, whether individual, corporate, associate or otherwise, are
27 unknown to Plaintiff who therefore sues such DOE Defendants by fictitious names pursuant to
28 California Code of Civil Procedure section 474. Plaintiff is informed and believes that the DOE

1 Defendants are residents of the State of California. Plaintiff will amend this complaint to show
2 such DOE Defendants' true names and capacities when they are known.

3 8. Plaintiff is informed and believes and thereon alleges that, unless otherwise
4 indicated, each Defendant was the agent and/or employee of every other Defendant within the
5 course and scope of said agency and/or employment, with the knowledge and/or consent of said
6 Defendant.

7 9. To the extent any allegation contradicts another allegation, they are to be construed
8 as "alternative" theories.

9 **JURISDICTION AND VENUE**

10 10. This Court is the proper Court, and this action is properly filed in the Superior
11 Court for the County of Monterey, because Defendants Mission Ranches and SECO both transact
12 business within this county at 117 N First Street, King City. Plaintiff and Class Members
13 performed work for Defendants and experienced the legal violations that are the subject of this
14 Complaint in Monterey County.

15 11. This Court has jurisdiction over the Plaintiff's and Class Members' claims for
16 damages, interest thereon, related penalties, injunctive and other equitable relief, restitution of
17 ill-gotten benefits arising from Defendants' unlawful, unfair, and/or fraudulent business
18 practices, and attorneys' fees and costs pursuant to, *inter alia.*, California Business and
19 Professions Code sections 17200-17208, and the statutes cited herein.

20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 12. Plaintiff has satisfied all applicable administrative requirements then amend to add
22 a claim pursuant to the Private Attorney General's Act, California Labor Code sections 2698 *et*
23 *seq.*

24 13. Pursuant to California Labor Code section 2699.5, Plaintiff has exhausted all
25 administrative remedies and satisfied all private, administrative, and judicial prerequisites to the
26 institution of this action, insofar as such prerequisites pertain to Plaintiff's cause of action brought
27 pursuant to the Private Attorney General's Act ("PAGA"), California Labor Code sections 2699
28 *et seq.* Plaintiff has complied with the procedures for bringing suit specified in California Labor

Code section 2699.3. Plaintiff has given written notice, by certified mail, to the Labor and Workforce Development Agency (“LWDA”) and to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support those violations. More than 65 days have passed with no response from the LWDA. Accordingly, Plaintiff has satisfied all prerequisites to pursuing PAGA claims.

14. Plaintiff has satisfied all private, administrative, and judicial prerequisites to the institution of this action.

15. The California Workers’ Compensation Act does not preempt this action because Defendants’ unlawful practices, as alleged herein, are not risks or conditions of employment. Plaintiff is not required to satisfy any further private, administrative, or judicial prerequisites to the institution of this action, insofar as such prerequisites pertain to any of the remaining causes of action in this complaint.

FACTS

16. Plaintiff began his employment with Defendants in about May 2020. At all times during his employment with Defendants, Plaintiff was performing his job duties satisfactorily and received positive performance reviews.

17. Plaintiff worked for Defendant as a field worker/general laborer for approximately five months. Defendant paid Plaintiff \$13.50/hour. Plaintiff worked on average approximately 10 to 12 hours per day, 6 days a week for Defendant.

18. Plaintiff and other workers would start working at around midnight each day and were not permitted to take any rest breaks, and were not permitted to have a lunch break until approximately 7 or 8 a.m. in the morning.

19. Defendants had a policy of claiming it would be paying overtime after 9 hours of work in a single day, but it did not actually pay properly, and Defendants did not have a policy or practice of paying overtime for work after 50 hours in a week.

20. All policies and practices described herein were in place at all of Defendants’ business locations in California. As such, all members of the classes were subject to these same unlawful policies and practices in violation of California law. Plaintiff is informed and believes

1 that Defendants knowingly engaged in the unlawful acts alleged herein, thereby enjoying a
2 significant competitive edge over other companies within its industry. In many, if not all cases,
3 these common practices have led to willful violations of California and federal law, entitling
4 Plaintiff and Class Members to a recovery, pursuant to, *inter alia*, the statutes cited herein.

5 21. Plaintiff and Class Members were not paid for overtime hours despite routinely
6 and consistently working more than 50 hours per week.

7 22. Instead, Plaintiff and Class Members were only paid overtime after 9 hours of work
8 on a single day.

9 23. Defendants' policy and practice of not maintaining time records for its employees
10 violates California law on its face. Defendants' failure to record hours also resulted in substantial
11 off-the-work, including overtime hours, since employees were required to work shifts in excess
12 of 50 hours per week and sometimes in excess of 12 hours per day. Defendants' failure to pay for
13 all hours worked, including overtime hours, resulted in part from Defendants' failure to record all
14 hours worked. Defendants' failure to pay for all hours worked, including overtime hours, resulted
15 in payroll records such as wage statements that were not accurate or legally compliant, in violation
16 of California Labor Code sections 226 and/or 1174(d).

17 24. Plaintiff and Class Members were not consistently authorized or permitted to take
18 meal and rest breaks as required by California law. Pursuant to California law, an employee is
19 entitled to one ten-minute rest period if required to work at least three and one-half hours, two
20 ten-minute rest periods if required to work more than six hours, and three ten-minute rest periods
21 if required to work more than ten hours. Pursuant to California law, an employee is entitled to one
22 thirty-minute meal period if required to work at least five hours and two thirty-minute meal
23 periods if required to work at least ten hours. Defendants did not consistently provide the meal
24 and rest periods to which Plaintiff and Class Members were entitled because business needs took
25 precedence, routinely interfering with their breaks. If Plaintiff or Class Members failed to address
26 business needs at any time, including during breaks, they were subject to discipline, up to and
27 including termination. Despite these policies and practices, Plaintiff alleges on information and
28 belief that Defendants have not paid missed meal or rest period premiums to Plaintiff or Class

Members. Defendants failed to provide meal and rest periods and failed to make premium payments to Plaintiff and Class Members for missed meal and rest breaks. Defendants' failure to record all breaks and failure to pay applicable premiums, resulted in part from Defendants' failure to record all hours worked. Defendants' failure to record all breaks and failure to pay applicable premiums resulted in payroll records such as wage statements that were not accurate or legally compliant, in violation of California Labor Code sections 226 and/or 1174(d).

25. Even after Plaintiff or Class Members were terminated or voluntarily resigned, Defendants refused to pay owed wages despite California Labor Code sections 201-204, inclusive. More than 30 days has passed since certain individuals left Defendants' employ, entitling those individuals to the maximum penalties.

26. Plaintiff brings this action on behalf of himself and as a class action on behalf of the following Hourly Employee Class and Terminated Subclass:

All non-exempt employees who worked for Defendants, in the State of California at any time on or after the date that is four years prior to when the Complaint was filed.

Terminated Subclass: All persons who are eligible for membership in the Class but who are no longer employed by Defendants.

Class Members can be identified through Defendants' records including employee timekeeping and payroll records.

27. Defendants and their officers and directors are excluded from any class defined in the preceding paragraphs.

28. This action has been brought and may properly be maintained as a class action under California Code of Civil Procedure section 382 because there is a well-defined community

of interest in the litigation and the proposed Classes are easily ascertainable. The Class and subclass defined herein satisfy all class action requirements:

- a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the Plaintiff Classes are so numerous that joinder of all members is impractical, if not impossible, insofar as Plaintiff is informed and believes and, on that basis, alleges that the total number of Class Members is, at least, in the hundreds, if not thousands of individuals. Membership in the Classes will be determined by and upon analysis of records maintained by Defendants.
- b. Commonality: Plaintiff and Class Members share a community of interests in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, including, but not necessarily limited to:
 - 1) Whether Defendants violated one or more of California's Wage Orders, the California Labor Code and/or California Business and Professions Code sections 17200 *et seq.* by failing to pay all wages due to Plaintiff and Class Members;
 - 2) Whether Defendants violated one or more of California's Wage Orders, the California Labor Code and/or California Business and Professions Code sections 17200 *et seq.* by failing to pay overtime wages due to Plaintiff and Class Members;
 - 3) Whether Defendants violated and/or continues to violate, California Labor Code section 1174 by failing to keep accurate records of Plaintiff's and Class Members' hours of work;
 - 4) Whether Defendants violated, and continues to violate California Labor Code sections 201-204 by failing to pay all wages due and owing at the time particular Class Members' employment with Defendants terminated;
 - 5) Whether Defendants violated and/or continues to violate California Labor Code section 226 by failing to provide semi-monthly itemized wage statements to Plaintiff and Class Members of total hours worked and all applicable hourly rates in effect during each relevant pay period.
 - 6) Whether Defendants violated and/or continues to violate California Labor Code section 1194 by failing to pay minimum wage;
- c. Typicality: Plaintiff's claims are typical of the claims of Class Members. Plaintiff and Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of state law, as alleged herein.
- d. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes, or may make it, impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also

create a risk of inconsistent rulings, which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

- e. Adequacy of Representation: Plaintiff is an adequate representative of the Plaintiff Classes, in that Plaintiff's claims are typical of those of Class Members, and Plaintiff has the same interests in the litigation of this case as Class Members. Plaintiff is committed to vigorous prosecution of this case and has retained competent counsel experienced in litigation of this nature. Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the class as a whole. Plaintiff anticipates no management difficulties in this litigation.

FIRST CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED

(Lab. Code §§ 200-204, 218, 223, 225.5, 226, 500, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198)
(*On behalf of Plaintiff and all Class Members against all Defendants*)

29. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

30. Defendants were required to compensate Plaintiff and Class Members for all hours worked pursuant to the Industrial Welfare Commission Order 1-2001, California Code of Regulations, Title 8, Chapter 5, Section 11070 and Labor Code sections 200-204, 225.5, 500, 510, 558 1197, 1198.

31. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Orders.

32. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the underlying unpaid minimum wages and interest.

33. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Orders for all hours worked.

34. Labor Code section 1197.1 provides that it is unlawful for any employer or any other person acting either individually or as an officer, agent, or employee of another person, to pay an employee, or cause an employee to be paid, less than the applicable minimum wage.

1 35. Labor Code section 223 provides, “Where any statute or contract requires an
2 employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage
3 while purporting to pay the wage designated by statute or by contract.

4 36. Plaintiff and Class Members routinely performed work “off-the-clock.” Thus,
5 Defendants are liable for an additional violation to the extent Defendants are in fact secretly
6 paying less than the designated wage scale.

7 37. As alleged throughout this Complaint, Defendants failed to track their hours
8 worked and refused to compensate Plaintiff and Class Members for some and/or all of the wages
9 (including overtime wages) earned, in violation of the applicable California Wage Order, Title 8
10 of the California Code of Regulations and the California Labor Code.

11 38. At all relevant times, Defendants were aware of, and were under a duty to comply
12 with the wage and overtime provisions of the California Labor Code, including, but not limited
13 to California Labor Code sections 200-204, 216, 225.5, 500, 510, 558 1197, 1198. Plaintiff and
14 Class Members are not exempt from the requirements of the Employment Laws and Regulations.
15 Plaintiff and Class Members have been deprived of their rightfully earned compensation as a
16 direct and proximate result of Defendants’ failure and refusal to pay said compensation. Under
17 California employment laws and regulations, Plaintiff and Class Members are entitled to recover
18 compensation for all hours worked, in addition to reasonable attorney’s fees and costs of suit.

19 39. Labor Code section 216 provides, “In addition to any other penalty imposed by
20 this article, any person, or an agent, manager, superintendent, or officer thereof is guilty of a
21 misdemeanor, who: (a) Having the ability to pay, willfully refuses to pay wages due and payable
22 after demand has been made. (b) Falsely denies the amount or validity thereof, or that the same
23 is due, with intent to secure for himself, his employer or other person, any discount upon such
24 indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to
25 whom such indebtedness is due.”

26 40. As a direct and proximate result of Defendants’ unlawful conduct, as set forth
27 herein, Plaintiff and Class Members have sustained damages, including loss of earnings for hours
28

worked, including overtime hours worked, on behalf of Defendants, in an amount to be established at trial, and are entitled to recover attorneys' fees and costs of suit.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(Lab. Code §§ 200-204, 210, 216, 223, 225.5, 500, 510, 558, 860, 1194, 1198; IWC Wage Orders)

(On behalf of Plaintiff and all Class Members against all Defendants)

41. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

42. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Orders.

43. Wage Order 14 and Labor Code § 860 governs when companies must pay overtime rates based on number of hours worked per day and per week.

Schedule for Changes to Daily and Weekly Hours After Which Agricultural Workers Receive Overtime Pay

Effective date for employers with 26 or more employees:	Effective date for employers with 25 or fewer employees	Overtime (1.5x regular rate of pay) required after the following hours per day / hours per workweek:
Jan. 1, 2019	Jan. 1, 2022	9.5 / 55
Jan. 1, 2020	Jan. 1, 2023	9 / 50
Jan. 1, 2021	Jan. 1, 2024	8.5 / 45
Jan. 1, 2022*	Jan. 1, 2025*	8 / 40

See, e.g., <https://www.dir.ca.gov/dlse/Overtime-for-Agricultural-Workers.html>.

44. Pursuant to Labor Code section 1194(a), a plaintiff may bring a civil action for overtime wages to recover wages, interest, penalties, attorney's fees and costs.

45. Plaintiff and Class Members are not exempt from receiving overtime compensation.

1 46. Defendants required Plaintiff and Class Members to work in excess of the daily
2 and weekly time limits without paying the required overtime rates.

3 47. Employer had a policy of claiming it would be paying overtime after 9 hours of
4 work in a single day, but it did not actually pay properly. Moreover, Employer did not have any
5 policy regarding paying overtime rates after a worker reached the weekly threshold of hours
6 worked. For instance, during the four weeks in September 2020, Plaintiff worked more than fifty
7 hours but was not paid at an overtime rate for all hours over 50 in the week.

8 48. As a uniform practice, Defendants failed to keep the records of hours worked by
9 its employees as required by California's wage orders. However, records of the rates of pay for
10 Plaintiff and Class Members are in the possession or within Defendants' custody and control.

11 49. In many instances, Plaintiff and Class Members were entitled to twice their regular
12 rate of pay for the work performed, as Plaintiff and Class Members were often (1) working shifts
13 that lasted more than 12 hours in in a day or (2) working more than 50 hours in a week.

14 50. At all relevant times, Defendants were aware of, and were under a duty to comply
15 with the wage and overtime provisions of the California Labor Code, including, but not limited
16 to California Labor Code sections 200 *et seq.*, 510, 1194 and 1198 and IWC wage orders. As a
17 consequence, Defendants are subject to all applicable penalties, the exact amount to be proven at
18 trial.

19 51. Defendants violated Labor Code section 204 when they failed to pay Plaintiff and
20 Class Members minimum wage and failed to pay all wages earned for labor in excess of the
21 normal work period no later than the pay day for the next regular payroll period. As a consequence
22 for violating Labor Code section 204, Defendants are subject to all applicable penalties including
23 those specified pursuant to Labor Code section 210. The exact amount of the applicable penalties
24 will be proven at trial.

25 52. Labor Code section 223 provides, "Where any statute or contract requires an
26 employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage
27 while purporting to pay the wage designated by statute or by contract. Plaintiff and Class Members
28

1 routinely performed work “off-the-clock.” Thus, Defendants are liable for an additional violation
2 to the extent Defendants are in fact secretly paying less than the designated wage scale.

3 53. Labor Code section 216 provides, “In addition to any other penalty imposed by
4 this article, any person, or an agent, manager, superintendent, or officer thereof is guilty of a
5 misdemeanor, who: (a) Having the ability to pay, willfully refuses to pay wages due and payable
6 after demand has been made. (b) Falsely denies the amount or validity thereof, or that the same
7 is due, with intent to secure for himself, his employer or other person, any discount upon such
8 indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to
9 whom such indebtedness is due.”

10 54. During the last four years, and at all times relevant to this Complaint, Defendants
11 intentionally refused to pay overtime wages to Plaintiff and Class Members in order to receive an
12 economic benefit in violation of Wage Order 14 and Labor Code sections 223, 216, and 860. As
13 a consequence for violating the Labor Code sections referenced, Defendants are subject to all
14 applicable civil penalties including those specified pursuant to Labor Code section 225.5. The
15 exact amount of the applicable penalties will be proven at trial.

16 55. At all times relevant to this Complaint, Defendants were and are the employers of
17 Plaintiff and Class Members within the meaning of Labor Code section 558 and violated or caused
18 to be violated a provision or provisions of Part 2, Chapter 1, of the Labor Code regulating hours
19 and days of work and, as such, are liable to each Class Member for each such violation as set forth
20 in Labor Code section 558, in addition to an amount sufficient to recover underpaid wages. The
21 exact amount of the applicable penalties will be proven at trial.

22 56. Plaintiff and Class Members are entitled to interest on all due and unpaid wages
23 pursuant to Labor Code section 218.6.

24 57. Pursuant to Labor Code section 1194, Plaintiff and Class Members seek to recover
25 in a civil action the unpaid balance of the full amount of the unpaid overtime compensation,
26 including interest thereon, reasonable attorney’s fees, and costs of suit.

27 **THIRD CAUSE OF ACTION**
28 **FAILURE TO PAY MINIMUM WAGE**

(Lab. Code §§ 223, 1194 *et seq.*)
(*On behalf of Plaintiff and all Class Members against all Defendants*)

58. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

59. At all relevant times, Defendants were aware of and were under a duty to comply with California Labor Code section 1194 *et seq.*

60. California Labor Code section 1194(a) in relevant part provides:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

61. Moreover, California Labor Code section 1197 provides:

The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

62. Finally, California Labor Code section 1194.2(a) provides:

In any action under Section 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

63. Labor Code section 223 provides, "Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract. Plaintiff and Class Members routinely performed work "off-the-clock." Thus, Defendants are liable for an additional violation to the extent Defendants are in fact secretly paying less than the designated wage scale.

64. During the Class Period, Defendants employed Plaintiff and Class Members, each of whom did not receive the applicable minimum wage for all hours worked on Defendants' behalf. Said non-payment was the direct and proximate result of a willful refusal to do so by Defendants.

65. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff and Class Members have sustained damages, including loss of earnings for hours worked on behalf of Defendants, in an amount to be established at trial, and are entitled to recover attorneys' fees and costs of suit.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Lab. Code §§ 226.7, 512; IWC Wage Orders)

(On behalf of Plaintiff and all Class Members against all Defendants)

66. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

67. Plaintiff experienced these meal and rest violations constantly. For instance, during the four workweeks in September 2020, Plaintiff experienced late meal and rest breaks each week.

68. At all relevant times, Defendants were aware of and were under a duty to comply with California Labor Code sections 226.7 and 512 and applicable sections of the IWC Wage Order.

69. California Labor Code section 226.7 provides:

No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

....

If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

70. Moreover, California Labor Code section 512 provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the

employer and the employee only if the first meal period was not waived.

71. Section 11 of the applicable Wage Order provides:

- a. No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes....
- b. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes....
- c. If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

72. Moreover, section 12 of the applicable Wage Order provides:

- a. Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof
- b. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

73. Defendants routinely required Plaintiff and Class Members to work at least three and one-half hours without a rest period of at least 10 minutes and failed to compensate the Plaintiff and Class Members for said missed rest periods, as required by California Labor Code sections 226.7 and Industrial Welfare Commission Wage Orders.

74. Defendants routinely required Plaintiff and Class Members to work more than six hours without a second rest period of at least 10 minutes and failed to compensate Plaintiff and Class Members for said missed rest periods, as required by California Labor Code sections 226.7 and Industrial Welfare Commission Wage Orders.

75. Defendants routinely required Plaintiff and Class Members to work more than ten hours without a third rest period of at least 10 minutes and failed to compensate the Plaintiff and Class Members for said missed rest periods, as required by California Labor Code sections 226.7 and Industrial Welfare Commission Wage Orders.

1 76. Defendants routinely required Plaintiff and Class Members to work more than five
2 hours without a meal period of at least 30 minutes and failed to compensate the Plaintiff and Class
3 Members for said missed meal periods, as required by California Labor Code sections 226.7 and
4 512, and Industrial Welfare Commission Wage Orders.

5 77. Defendants routinely required Plaintiff and Class Members to work more than ten
6 hours without a second meal period of at least 30 minutes and failed to compensate the Plaintiff
7 and Class Members for said missed meal periods, as required by California Labor Code sections
8 226.7 and 512, and Industrial Welfare Commission Wage Orders.

9 78. By requiring Plaintiff and Class members to attend to business and failing to
10 consistently (1) provide meal breaks within the first five hours of a work shift, (2) provide
11 uninterrupted thirty-minute meal periods, and/or (3) authorize and permit ten-minute rest periods
12 to Class Members, Defendants violated the California Labor Code and sections 11 and 12 of the
13 applicable IWC Wage Order.

14 79. Even where Defendants' records specifically evidence that no meal and/or rest
15 periods were provided to Plaintiff and Class Members, Defendants refuse to provide these
16 employees with one hour of compensation for these respective violations as mandated by
17 California law. Plaintiff is informed and believes and, on that basis, alleges that Defendants have
18 never paid the one hour of compensation to any worker.

19 80. Plaintiff and Class Members are not exempt from the meal and rest period
20 requirements of the aforementioned Employment Laws and Regulations.

21 81. Plaintiff and Class Members did not willfully waive, through mutual consent with
22 Defendants, any such meal and rest periods.

23 82. Defendants did not pay premium payments to Plaintiff or Class Members for
24 missed meal periods. Similarly, Defendants did not pay premium payments to Plaintiff or Class
25 Members for missed rest periods.

26 83. Plaintiff and Class Members have been deprived of their rightfully earned
27 compensation for rest periods as a direct and proximate result of Defendants' failure and refusal
28 to pay said compensation. Plaintiff and Class Members are entitled to recover such amounts

pursuant to California Labor Code section 226.7(b), plus interest thereon, attorney's fees, and costs of suit.

84. Plaintiff and Class Members have been deprived of their rightfully earned compensation for meal periods as a direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff and Class Members are entitled to recover such amounts pursuant to California Labor Code section 226.7(b), plus interest thereon, attorney's fees, and costs of suit.

85. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff and Class Members have sustained damages, including lost compensation resulting from missed meal and/or rest periods, in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, certain Class Members are entitled to recover "waiting time" and other penalties, in an amount to be established at trial, as well as attorneys' fees and costs, and restitution, pursuant to statute.

FIFTH CAUSE OF ACTION
FAILURE TO PAY FINAL WAGES ON TIME

(Lab. Code §§ 201-204)

(On behalf of Plaintiff and all Class Members against all Defendants)

1. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

2. California Labor Code section 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge. Section 202 provides that all earned and unpaid wages of an employee who resigns are due and payable immediately if the employee provided at least seventy-two hours' notice; otherwise, wages of an employee who resigns are due within seventy-two hours of resignation.

3. At all relevant times herein, Defendants failed to implement a policy and practice to pay Plaintiff and Class Members accrued wages and other compensation due immediately upon termination or within seventy-two hours of resignation, as required by the California Labor Code. As a result, Class Members whose employment has ended have not been paid all compensation

1 due immediately upon termination or within seventy-two hours of resignation, as required by the
2 California Labor Code.

3 4. Defendant willfully failed to pay all final wages on time.

4 5. Defendants willfully failed to pay all final wages to involuntarily terminated
5 employees at the time of discharge even though California Labor Code section 201 requires that
6 employers provide immediate payment of all final wages at the time of termination.

7 6. Defendants willfully failed to pay all final wages on time to employees who
8 voluntarily resigned. Defendants were made aware of each terminated employee's preference with
9 respect to an election of whether to receive final wages by tender in person or by delivery. Those
10 who elected to receive tender in person were present at the workplace to collect payment.
11 Accordingly, California Labor Code section 202 has been satisfied.

12 7. Plaintiff and Class Members are not exempt from these requirements of the
13 Employment Laws and Regulations.

14 8. Based on Defendants' conduct as alleged herein, Defendants are liable for statutory
15 penalties pursuant to California Labor Code section 203 and other applicable provision of the
16 Employment Laws and Regulations in amounts to be established at trial, as well as attorneys' fees
17 and costs, pursuant to statute.

18 **SIXTH CAUSE OF ACTION**

19 **FAILURE TO MAINTAIN ACCURATE RECORDS**

20 (Lab. Code §§ 1174, 1174.5)

21 *(On behalf of Plaintiff and all Class Members against all Defendants)*

22 9. Plaintiff incorporates in this cause of action each and every allegation of the
23 preceding paragraphs, with the same force and effect as though fully set forth herein.

24 10. California Labor Code section 1174(d) provides:

25 Every person employing labor in this state shall ... [k]eep, at a central location in
26 the state ... payroll records showing the hours worked daily by and the wages paid
27 to ... employees.... These records shall be kept in accordance with rules established
28 for this purpose by the commission, but in any case shall be kept on file for not
less than two years.

11. Defendants failed to maintain accurate records of the hours worked and the wages paid to Plaintiff and Class Members. Defendants did not employ policies, procedures, and practices to track Plaintiff's and Class Members' hours.

12. Plaintiff and Class Members were injured by Defendants' failure to maintain accurate records, because, as alleged above, Plaintiff and Class Members did not receive pay for all hours worked, and thus suffered monetary damages due to Defendants' policies described above.

13. Plaintiff and Class Members are not exempt from the requirements of the Employment Laws and Regulations.

14. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and statutory penalties pursuant to California Labor Code sections 1174, 1174.5, and other applicable provisions of the Employment Laws and Regulations in amounts to be established at trial, as well as attorneys' fees and costs, pursuant to statute.

SEVENTH CAUSE OF ACTION
FAILURE TO FURNISH WAGE AND HOUR STATEMENTS

(Lab. Code §§ 226(e), 226.3)

(On behalf of Plaintiff and all Class Members against all Defendants)

15. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

16. California Labor Code section 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his/her/their employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his/her/their social security number, except that by January 1, 2008, only the last four digits of his/her/their social security number or an employee identification

number other than a social security number may be shown on an itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

17. California Labor Code section 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

18. California Labor Code section 226(e)(2) provides:

(A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his/her/their social security number or an employee identification number other than a social security number.

19. California Labor Code section 1174(d) provides:

Every person employing labor in this state shall . . . [k]eep, at a central location in the state . . . payroll records showing the hours worked daily by and the wages paid to . . . employees employed at the respective plants or establishments. These

records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

20. Defendants knowingly failed to provide Plaintiff and Class Members with timely and accurate wage and hour statements showing the inclusive dates of the pay period, gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity employing them, all applicable hourly rates in effect during each pay period, and the corresponding number of hours worked at each hourly rate. Plaintiff and Class Members in fact never received accurate wage statements at all, as Defendants did not employ a timekeeping system that actually tracked all hours their workers worked.

21. Plaintiff and Class Members were injured by Defendants' failure to provide accurate wage statements, because, as alleged above, Plaintiff and Class Members could not determine whether they were paid properly and/or did not receive pay for all hours worked, and thus suffered monetary damages due to Defendants' policies described above.

22. Plaintiff and Class Members are not exempt from the requirements of the Employment Laws and Regulations.

23. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and statutory penalties pursuant to California Labor Code section 226, and other applicable provisions of the Employment Laws and Regulations and other applicable provisions of the Employment Laws and Regulations in amounts to be established at trial, as well as attorneys' fees and costs, pursuant to statute.

EIGHTH CAUSE OF ACTION
LABOR CODE PRIVATE ATTORNEY GENERAL ACT

(Lab. Code §§ 2698 *et seq.*)

(On behalf of Plaintiff and all Class Members against all Defendants)

24. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

25. Plaintiff provided written notice by certified mail to the Labor and Workforce Development Agency of the specific provisions of this code alleged to have been violated as required by Labor Code section 2699.3. More than sixty-five days have passed with no response. As a result, Plaintiff may now commence a civil action pursuant to Labor Code section 2699.

26. The policies, acts and practices heretofore described violate the applicable Labor Code sections listed in Labor Code section 2699.5 and thereby give rise to statutory penalties as a result of such conduct. Plaintiff and Class Members, as aggrieved employees, hereby seek recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 on behalf of themselves and all other aggrieved employees against whom one or more of the aforementioned violations of the Labor Code was committed and other applicable provisions of the Employment Laws and Regulations in amounts to be established at trial, as well as attorneys' fees and costs, pursuant to statute

NINTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
(Bus. & Prof. Code §§ 17200 *et seq.*)

(On behalf of Plaintiff and all Class Members against all Defendants)

27. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

28. Plaintiff brings this cause of action individually and on behalf of all others similarly situated.

29. Defendants' violations of California law, including Defendants' violations of the Employment Laws and Regulations as alleged herein constitutes an unfair business practice in violation of California Business and Professions Code sections 17200 *et seq* because they were done repeatedly, over a significant period of time, and in a systematic manner to the detriment of Plaintiff and Class Members.

30. In addition, Plaintiff brings this cause of action seeking equitable and statutory relief to stop Defendants' misconduct, as complained of herein, and to seek restitution of the

1 amounts Defendants acquired through the unfair, unlawful, and fraudulent business practices
2 described herein.

3 31. Defendants' knowing conduct, as alleged herein, constitutes an unlawful and/or
4 fraudulent business practice, as set forth in California Business and Professions Code sections
5 17200-17208. Specifically, Defendants conducted business activities while failing to comply with
6 the legal mandates cited herein.

7 32. As a result of Defendants' unfair business practices, Defendants have reaped unfair
8 benefits at Plaintiff's and Class Members' expense.

9 33. Defendants' business practices were unfair as set forth herein, providing an
10 independent basis to support this claim.

11 34. Defendants' business practices were also fraudulent, as set forth herein, providing
12 yet another independent basis to support the claim.

13 35. Plaintiff is informed and believes and, based thereon, alleges that the fictitious
14 Defendants named as DOES 1 through 100, inclusive, aided, abetted, incited, compelled, coerced,
15 or conspired to commit one or more of the acts alleged in this Cause of Action.

16 36. Defendants have clearly established a policy of accepting a certain amount of
17 collateral damage as incidental to its business operations, rather than accepting the alternative
18 costs of full compliance with fair, lawful, and honest business practices, ordinarily borne by its
19 responsible competitors and as set forth in legislation and the judicial record. Defendants' policy
20 is confirmed by Plaintiff's and Class Members' damages as herein alleged.

21 37. Defendants' unfair business practices entitle Plaintiff and Class Members to seek
22 preliminary and permanent injunctive relief and other restitutionary relief, including but not
23 limited to orders that Defendants account for and restore unlawfully withheld compensation to
24 the Plaintiff and Class Members and discontinue certain unlawful employment practices, conduct
25 and implement adequate training, including the implementation of policies and procedures
26 designed to prevent the legal violations at issue in this lawsuit. Defendants' unfair business
27 practices also entitle Plaintiff to attorneys' fees and costs.

28 **JURY DEMAND**

Plaintiff hereby demands a jury trial on all issues and causes of action.

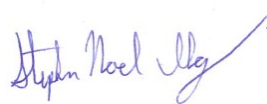
PRAYER FOR RELIEF

Wherefore, Plaintiff prays for the following forms of relief, individually and on behalf of all others similarly situated:

1. Certification of this action as a class action on behalf of the classes defined herein and designation of Plaintiff as representative of the classes and his counsel as counsel for the classes;
2. For penalties, including civil penalties, pursuant to all provisions of the Labor Code referenced herein which provide for penalties as a result of the conduct alleged herein;
3. For costs of suit incurred herein and attorneys' fees pursuant to the statutes cited herein;
4. For compensatory damages;
5. Compensation for all hours worked but not paid;
6. For general damages in amounts according to proof and in no event in an amount less than the jurisdictional limit of this court;
7. For special damages according to proof;
8. For punitive damages where allowed by law;
9. For restitution of all monies due to Plaintiff from the unlawful business practices of Defendants;
10. For injunctive relief;
11. For pre-judgment and post-judgment interest as provided by law; and
12. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

ILG Legal Office, P.C.



Stephen Noel Ilg
George Lin

Date: February 10, 2021

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Attorneys for Plaintiffs